IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.39 OF 2006

Kanaiyalal Purshottamdas Doshi. ...Petitioner.

vs.

M/s.T.H.Vakil Shares & Securities Pvt.Ltd. ...Respondent.

Mr.Z.Andhyarujina with Jayant Gaikwad i/b. Ajay Khandhar & Co.,for Petitioner.

None for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 4th September,2006.

P.C.:-

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act against the Award dated 25.5.2005 passed by the Appellate bench of the Bombay Stock Exchange whereby the Appellate Bench has confirmed the Award made by the original Arbitral Tribunal of the Bombay Stock Exchange dated 19.1.2005. The original Arbitral Tribunal as also the Appellate Arbitral Tribunal have dismissed the claim made by the petitioner as barred by the law of Limitation.

2. The petitioner is a client of the respondent. The claim of

the petitioner was based on three bills viz. one bill dated 9.9.2003 and two bills dated 14.1.2004. According to the Arbitral Tribunal, the period of limitation for making a reference under the bye-laws of the Bombay Stock Exchange is Six months from accrual of cause of action, and as the reference was made on 29.7.2004 the reference has not been made within the period of six months. from the accrual of cause of action. The learned Counsel appearing for petitioner submits that taking two bills dated 14.1.2004 the period of limitation provided by the bye-laws i.e. six months from the date of accrual of cause of action will come to an end on 15.7.2004. According to the learned Counsel, bye-law no.252 of the Bye-laws of Bombay Stock Exchange time spent by the claimant in the proceedings before the Committee appointed by the Stock Exchange for redressal of grievance is liable to be excluded. According to the learned Counsel, before the Arbitral Tribunal the petitioner had claimed that he had made complaint to the Grievance Cell on 22.6.2004 and his complaint was disposed of by the committee on 12.7.2004 and therefore, while calculating the period for limitation, the period spent from 22.6.2004 till 12.7.2004 in pursuing the proceedings before the Grievance Cell is liable to be excluded. But this plea which was specifically raised before the original Arbitral Tribunal in the rejoinder filed by the petitioner has been totally excluded from consideration by the original Arbitral Tribunal as also by the Appellate Arbitral Tribunal.

3. The respondent has been served. Affidavit of service has been filed. Respondent is not appearing.

4. Perusal of both the Awards shows that so far as Bill dated 14.1.2004 is concerned, both the Arbitral Tribunals have held that the period of limitation is six months and because the reference was made on 29.7.2004 the reference was barred by the Law of Limitation. It is also clear from the record that in the Rejoinder filed before the original Arbitral Tribunal the petitioner had claimed that he is entitled to exclusion of time spent in pursuing the proceedings before the Grievance Redressal Committee from 22.06.2004 till 12.7.2004. The contention urged on behalf of the petitioner was relevant and was supported by the bye-laws of the Bombay Stock Exchange, and therefore, in my opinion, both the Arbitral Tribunals were under a duty to consider whether the time spent by the petitioner in pursuing the proceedings before the Grievance Redressal Committee is liable to be excluded while computing the period of limitation of six months. Failure of both the Arbitral Tribunals to consider this aspect of the matter, in my opinion, vitiates both the Award because the aspect on which the petitioner had relied on is the relevant aspect. In my opinion, failure to consider the relevant aspect of the matter amounts to breach of principles of natural justice by the Arbitral Tribunals. The

Awards impugned in this petition are therefore liable to be set aside. Accordingly, they are set aside.

The petitioner is free to pursue the remedy, if any, available to him under the law in relation to his claims.